

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE**

STATE OF WASHINGTON,

Plaintiff,

v.

UNITED STATES DEPARTMENT OF
HEALTH AND HUMAN SERVICES;
ALEX M. AZAR, in his official capacity as
the Secretary of the United States
Department of Health and Human Services,

Defendants.

NO. 2:20-cv-01105

DECLARATION OF
DAVID ISEMINGER

Pursuant to 28 U.S.C. § 1746(2), I, David Iseminger, declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct:

1. I am over the age of 18 and competent to testify in this matter.
2. I have been an employee of the Health Care Authority since November 2013. Currently, I am the Director of the Employees and Retirees Benefits (ERB) Division that administers the Public Employees' Benefits Board (PEBB) Program and the School Employees' Benefits Board (SEBB) Program and have held this position since January 1, 2018. Prior to this, I served as the acting Director for the ERB Division from July 1, 2017 through December 31,

1 2017; Deputy Director for the division from January 1, 2016 through June 30, 2017; and the
2 legal services manager for the PEBB Program from November 2013 to December 31, 2015.
3 Based on these experiences, I have a strong understanding of all aspects of the operational, legal,
4 policy, collective bargaining, and benefit structure for the PEBB and SEBB Programs.

5 3. I hold a Juris Doctorate (2009) and Master of Public Health Genetics (2010) from
6 the University of Washington and Bachelor of Science in Molecular Genetics from the
7 University of Rochester (NY) (2005). I am also an attorney licensed in the state of Washington
8 (WSBA #42768).

9 4. I am familiar with the rule of the Department of Health and Human Services
10 entitled "Nondiscrimination in Health and Health Education Programs or Activities, Delegation
11 of Authority," 81 Fed. Reg. 31375-473 (the "Final Rule"), which was published in the Federal
12 Register on June 19, 2020.

13 5. HCA purchases health care for Washington residents through Apple Health
14 (Medicaid), the Public Employee Benefits Board (PEBB) Program, the School Employee
15 Benefits Board (SEBB) Program, and the Contract of Free Association (COFA) Islander Health
16 Care Program. More than 2.5 Washingtonians receive health care services through programs
17 financed and administered by HCA, making HCA the largest health care purchaser in
18 Washington.

19 6. The Public Employee Benefits Board is created pursuant to RCW 41.05.055
20 within HCA. The Board's function is to design and approve health insurance benefit plans for
21 State and school district employees, and to establish eligibility criteria for participation in
22 insurance benefit plans.

23 7. Under RCW 41.05.065, the Board's duties include studying all matters connected
24 with the provision of health care coverage, life insurance, liability insurance, accidental death
25 and dismemberment insurance, and disability income insurance or any of, or a combination of,
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1 the enumerated types of insurance for employees and their dependents on the best basis possible
2 with relation both to the welfare of the employees and to the state.

3 8. Under RCW 41.05.065, the Board is required to develop employee benefit plans
4 that include comprehensive health care benefits for employees. In developing these plans, the
5 Board considers the following elements:

- 6 a. Methods of maximizing cost containment while ensuring access to quality
7 health care;
- 8 b. Development of provider arrangements that encourage cost containment and
9 ensure access to quality care, including but not limited to prepaid delivery
10 systems and prospective payment methods;
- 11 c. Wellness incentives that focus on proven strategies, such as smoking cessation,
12 injury and accident prevention, reduction of alcohol misuse, appropriate weight
13 reduction, exercise, automobile and motorcycle safety, blood cholesterol
14 reduction, and nutrition education;
- 15 d. Utilization review procedures including, but not limited to a cost-efficient
16 method for prior authorization of services, hospital inpatient length of stay
17 review, requirements for use of outpatient surgeries and second opinions for
18 surgeries, review of invoices or claims submitted by service providers, and
19 performance audit of providers;
- 20 e. Effective coordination of benefits; and
- 21 f. Minimum standards for insuring entities.

22 9. Approximately six years ago, the Board began to hear from advocates, analysts,
23 and agency personnel about the cost-effectiveness of providing coverage for transgender
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1 healthcare services, including hormone therapies and surgical procedures related to gender
2 transition. The reason for this was that, at that time, public health insurance in Washington State
3 did not cover these procedures and other transgender healthcare services.

4 10. On April 16, 2014, the Board met to conduct regular business. During that
5 meeting, the Board received public comment from a number of individuals including attorney
6 David Ward at Legal Voice, who stated that although Washington State prohibited
7 discrimination based on gender identity in 2006, many health plans in Washington continued to
8 have exclusions in insurance policies that had the effect of denying medically necessary care for
9 transgender persons. Mr. Ward described a Washington State public employee who was denied
10 coverage for mental health counseling simply because she had a diagnosis of gender identity
11 disorder. Mr. Ward urged the Board to join Oregon, California, Colorado, Vermont, Connecticut,
12 and the District of Columbia, which had taken steps to remove transgender exclusions from their
13 health plans.

14 11. During the same Board meeting, Roberta Dalley, Associate Professor Radiology
15 at the University of Washington, presented public comment regarding the problems faced by
16 transgender individuals in securing coverage for gender affirming surgical procedures. She also
17 noted the “medical necessity” of the availability of these procedures to prevent suicide of
18 transgender individuals and violence against them, and cited statistics. She also noted that the
19 American Medical Association supports public and private health insurance coverage for the
20 treatment of gender identity disorder.

21 12. On April 16, 2014, the Board also heard from Laura Harrington, Administrative
22 Coordinator for the Air Force ROTC Program at the University of Washington. Ms. Harrington
23 explained that one of her daughters was transgender and transitioned, and her domestic partner
24 was transgender and transitioned, and that her family struggled financially because of the
25 coverage exclusions in the Public Employees Benefit Program health insurance plans available
26 at that time. Ms. Harrington also explained that high suicide rate among transgender individuals

1 who do not receive medically appropriate procedures to help them transition successfully. Ms.
2 Harrington asked the Board to provide coverage for transgender healthcare services for the health
3 of her family and others.

4 13. Danielle Askini, Policy Director at Basic Rights Oregon in Portland and the
5 Advocacy Director at Gender Justice League, which is a transgender justice organization in
6 Seattle, also presented at the Board meeting in April 2014. She provided the Board with a study
7 from the State of California, Department of Insurance. This study is attached as Exhibit 1 to this
8 Declaration.

9 14. On July 16, 2014, the Board again met to conduct regular business and Mr. Ward
10 and Ms. Askini both provided additional public comment on the benefits of providing
11 transgender benefits. Ms. Askini stated that suicide was a regular occurrence in the transgender
12 community and that lack of health benefits was one of the primary motivating factors. According
13 to Ms. Askini, various studies show that suicide rates are between 30 and 45 percent and that
14 those drop down to about 1 to 2 percent when transgender people have access to care. Indeed,
15 Ms. Askini also spoke about a young transgender person in Seattle who committed suicide just
16 the month before.

17 15. The PEB Board had information to understand not only that gender affirming
18 healthcare services for transgender people is needed to save lives, it also reduces costs by making
19 future spending on depression, anxiety, substance abuse, and suicide unnecessary for people who
20 would otherwise fall victim to those and other health problems. Consequently, on July 31, 2014,
21 the Board met to vote on a number of Resolutions. Resolution 4 was unanimously approved by
22 the Board, which provided that all PEBB medical plans would provide coverage for non-surgical
23 healthcare services and prescriptions for the treatment of gender dysphoria beginning January 1,
24 2015, as well as surgical services beginning July 1, 2015. At a subsequent meeting, the Board
25 moved the effective date of coverage for surgical services to January 1, 2015.
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1 16. Today, the criteria a patient must meet to receive coverage for transgender
2 services, is different for surgical treatments of gender dysphoria versus non-surgical treatments
3 for gender dysphoria. However, there are specific mental health requirements that an individual
4 must meet in order to receive both the surgical and non-surgical treatments.

5 17. During the first year of coverage in 2015, 131 individuals received covered
6 transgender services and the total amount paid was \$384,942.

7 18. In the PEBB Program in 2016, 250 individuals received covered transgender
8 services and the total amount paid was \$801,323.

9 19. In the PEBB Program in 2017, 338 individuals received covered transgender
10 services and the total amount paid was \$1,441,915.

11 20. In the PEBB Program in 2018, 441 individuals received covered transgender
12 services and the total amount paid was \$1,429,758.

13 21. In the PEBB Program in 2019, 556 individuals received covered transgender
14 services and the total amount paid was \$2,169,686.

15 22. HCA's data shows a continued and growing demand in Washington for
16 transgender services and for access to this important component of health care.

17 23. It is my understanding the Final Rule removes previous prohibitions of gender-
18 based healthcare discrimination under the ACA. More specifically, it is my understanding the
19 final rule removes from the definition of discrimination "on the basis of sex" discrimination
20 based on gender identity and sex stereotyping, and provides that the Rule does not prohibit sexual
21 orientation discrimination.

22 24. For benefits in Washington State's PEBB and SEBB Programs, any interference
23 in the ability of a transgender person to access the health care system, whether they are actual or
24 perceived barriers, will impact the individual's use of covered transgender benefits, including
25 the required behavioral services they must access to have hormone and surgical benefits covered.
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1 Creating interference to the access of these behavioral health services will also result in any other
2 behavioral health indicators from being identified and treated.

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4 EXECUTED on this 14th day of July, 2020 in Tacoma Washington.

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9 David Iseminger
10 Director, ERB Division
11 Health Care Authority
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